

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
IMS P.C. Environmental Engineering) ASBCA No. 53168
)
Under Contract No. DACW45-94-D-0049)

APPEARANCE FOR THE APPELLANT: Sam Zalman Gdanski, Esq.
Suffern, NY

APPEARANCES FOR THE GOVERNMENT: Frank Carr, Esq.
Engineer Chief Trial Attorney
Thomas J. Ingram, IV, Esq.
Engineer Trial Attorney
U.S. Army Engineer District, Omaha

OPINION BY ADMINISTRATIVE JUDGE STEMLER

After docketing the subject appeal, the Board questioned whether the underlying 18 September 2000 claim exceeding \$100,000 had been certified when filed with the contracting officer as required by 41 U.S.C. § 605(c)(1). In response to inquiries by the Board an undated certification was submitted to the Board on 6 April 2001 and simultaneously sent to Government counsel. The contractor's attorney acknowledged, however, that this certification was "drafted after initiation of this appeal." (Appellant's correspondence dated 4 May 2001)

An incomplete or defective certification does not deprive the Board of jurisdiction over an appeal and can be corrected. The absence of a certification, however, is not considered a defect. A claim exceeding \$100,000 not accompanied by any certification precludes the Board from exercising jurisdiction. *Eurostyle Incorporated*, ASBCA No. 45934, 94-1 BCA ¶ 26,458.

A subsequent filing of a certification* after initiation of an appeal, has no legal bearing on the Board's jurisdiction over the subject appeal. *CDM International, Inc.*, ASBCA No. 52123, 99-2 BCA ¶ 30,467. Nothing in the cases cited by appellant's counsel in his 4 May 2001 correspondence leads us to conclude otherwise.

* The Government also contests the legal efficacy of appellant's having filed the claim certification with Government counsel instead of the contracting officer, as directed by 41 U.S.C. § 605. We need not rule on this issue.

Accordingly, the subject appeal is dismissed without prejudice for lack of jurisdiction.

Dated: 14 May 2001

MARK N. STEPLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur

I concur

EUNICE W. THOMAS
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

ALEXANDER YOUNGER
Administrative Judge
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 53168, Appeal of IMS P.C. Environmental Engineering, rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals